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AZ CORP COMMISSION
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September 5, 2001

Maureen A. Scott, Esq.
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Arizona Corporation Commission
DOCKETED

SEP 05 2001

DOCKETED BY 

Dear Ms. Scott,

During the recent meeting between representatives of the Federal Communications Commission, the Arizona Staff and certain members of the CLEC industry regarding the Section 271 process in Arizona, the Staff encouraged parties, particularly recent entrants like Time Warner Telecom of Arizona, LLC ("TWTC"), to supplement the record in this proceeding with new problems or issues that they believe should be addressed before final consideration of Qwest's application. In response to that offer, TWTC hereby submits the following comments and/or observations on matters important to its operations in Arizona.

By way of background, it is important to note that TWTC entered the Phoenix and Tucson markets earlier this year through the purchase of substantially all of the assets of GST Telecom, Inc., a company that entered Chapter 11 in the year 2000.¹ Because TWTC is a recent entrant, TWTC believes it is fair to say that the Company's contemporary experience with Qwest's actual performance in certain areas is directly relevant to considering whether Qwest's future promises pursuant to its SGAT efforts are or should be the basis for granting it long distance relief.² TWTC wants to spotlight what it is like to be on the receiving end of Qwest's wholesale services while trying to compete with it on a retail basis. In that regard, these comments touch on a recent collocation problem, problems obtaining timely access to Qwest customer service records (CSRs), and problems obtaining timely responses to TWTC's pole attachment requests. Additionally, TWTC's comments address a failing of the current Performance Assurance Plan ("PAP"), which does not address a form of competitive entry known as special

¹ As noted above, due to the fact that the Company entered the market earlier this year, TWTC has not been an active participant in this proceeding to date. Indeed, the Company's application for intervention was granted by the Administrative Law Judge on August 20, 2001. TWTC's application to intervene was prompted by the problems addressed herein. Nevertheless, it believes its recent experience with Qwest is directly relevant to final consideration of Qwest's application.

² While TWTC is not a major participant in the long distance industry and it does not have a long term wish to prevent Qwest from obtaining long distance relief, it does believe the recent experience with Qwest is directly relevant to an evaluation of the Company's ability to deliver on its promises.

access. That is, CLEC use of special access circuits obtained from Qwest to expand their metropolitan networks to locations not presently served by their own facilities.

Each of these items will be addressed below.

Unreasonable imposition of new collocation rates without Commission approval or an interconnection agreement amendment.

During June of this year, TWTC contacted Qwest to vacate a caged collocation arrangement that GST had acquired at Qwest's Rincon central office location in Tucson. Qwest responded by informing TWTC of its new collocation "decommissioning policy" which, Qwest contends, requires payment of two new nonrecurring charges, a "Decommissioning Assessment Fee" and a "Network Systems Administrative Fee." Qwest also informed TWTC that the Company would not accept TWTC's order to terminate the arrangement until the new decommissioning fees were paid and that TWTC would be responsible for all monthly recurring charges until the process had been followed in full.

Through written correspondence,³ TWTC informed Qwest that the Company had no intention of adhering to Qwest's unilaterally-imposed decommissioning policy and requested that Qwest cite any order by the Arizona Corporation Commission or, for that matter, any provision in the companies' existing interconnection agreement which provided for decommissioning charges or to any provision of the agreement which allows Qwest to dictate new terms and conditions.

Qwest responded a couple of weeks later, stating that the decommissioning policy was a "new product offering" and that TWTC should pursue decommissioning by seeking either an interconnection agreement amendment from Qwest or opt in to another agreement.⁴ Simply stated, and this the main point TWTC wants to make about this issue, is that Qwest's position is dangerous because it turns contractual arrangements on their head. In essence, Qwest is saying under its new unilaterally-imposed policy, TWTC has to pay Qwest \$3500.00 in unsubstantiated charges to terminate a collocation arrangement or else it must continue to pay recurring charges for a collocation arrangement it does not need. Qwest will not recognize or accept TWTC's request to vacate a collocation arrangement or order until TWTC follows the policy. When a CLEC like TWTC questions the policy, Qwest says if you do not like it you can seek an amendment to the agreement, which, of course, takes months and may require arbitration.

Qwest's logic is completely backwards. If Qwest wants to change interconnection arrangements including collocation it, not TWTC, should have the burden of seeking an amendment or demonstrating to the Commission that its new policy

³ See Attachment A, June 29, 2001 Letter of Ms. Ann Bryant, Carrier Relations Manager for TWTC to Ms. Pat White, Qwest Senior Project Analyst.

⁴ See Attachment B, July 11, 2001 Letter of Stephen C. Nelson (Qwest title unidentified on correspondence) to Ms. Ann Bryant, Carrier Relations Manager for TWTC.

is consistent with Section 251 of the Act. It is not up to the CLEC to bear the burden.⁵ Any other result is violative of Section 252 of the Act and portends a dangerous development in the competitive market in Arizona.⁶ Indeed, TWTC understands that Qwest's new decommissioning policy is but one of many unilaterally-imposed policies Qwest has implemented as it attempts to "productize" its obligations under Section 251 of the Act.

Slow response to requests for Customer Service Records (CSRs).

Over the past few months TWTC has had a very difficult time obtaining timely provision of Customer Service Records (CSRs) by Qwest. Instead of the normal industry interval of responding to these requests within a few days, Qwest has been responding only after TWTC initiates a series of escalations within Qwest's account team. Our experience is that Qwest is taking between 10 and 17 business days to respond and in some instances the responses are not complete.

The delayed or incomplete CSRs impact TWTC occurs in several ways. First, in several instances TWTC's sales force was not able to prepare accurate sales proposals to current Qwest customers. Second, where TWTC's sales personnel do not have access to the information necessary to assess a potential customer's requirements because certain items like hunting, long distance PICs and line types are not readily apparent, TWTC's sales force are required to go back to the customer several times with differing proposals because they are forced to speculate on some of the customer's existing service arrangements and features. The bottom line consequence of Qwest's delayed response to TWTC CSR requests are missed sales opportunities or delayed installations, both of which impact TWTC's ability or opportunity to compete with Qwest.

Delayed responses to pole attachment requests.

Over the past five months TWTC has submitted several pole attachment requests to Qwest to complete a network build into a Qwest central office and to extend TWTC's existing fiber network to a large health care provider. These were the first pole attachment requests submitted to Qwest since TWTC entered the Arizona market. Under TWTC's existing interconnection agreement with Qwest, Qwest has ten business days from the date of a submission of a request to prepare and return a quote for permit processing costs. Upon payment of the quote, the agreement provides for another period of time to process the attachment request and finalize any make ready work necessary to accommodate the request.

⁵ Attachment C is a copy of TWTC's Post Hearing Brief in Docket No. T-00000A-00-0194 relating to Qwest's wholesale pricing in Arizona.

⁶ Qwest recently notified TWTC of its intent to "suspend" the decommissioning policy and accepted TWTC's request to vacate the Tucson central office. While an improvement to the immediate situation, the Company's position that the policy is suspended is not comforting. What prevents Qwest from re-imposing the policy at any point in time? Nothing.

Unfortunately, TWTC had a hard time getting through the first step, obtaining a quote from Qwest. TWTC's first two requests fell on deaf ears. Submitted in March, the requests were not responded to until July. Only when the third request was submitted in early July, and after TWTC contacted representatives on Qwest's Section 271 team, did TWTC start to get responsive behavior from Qwest's pole attachment personnel. The third request went better only because the matter was escalated to Qwest's Section 271 team and because Qwest was warned about their lack of responsiveness. Prior to TWTC's warning, other efforts to escalate with the normal Qwest account team proved futile.

The need to expand Qwest's Performance Assurance Plan to measure and incent timely provisioning of special access circuit provisioning and maintenance and repair.

TWTC strongly believes that the Commission should incorporate high capacity special access services ordered from Qwest's state and/or federal tariffs, into the Performance Assurance Plan ("PAP") being considered as part of Qwest's application to obtain Section 271 approval to enter the long distance market. TWTC also requests that these special access services be subject to any approved Commission ordered remedy plan as part of this same proceeding.

Special access services are services that are purchased out of Qwest's federal or state access tariffs. For example, Qwest offers high capacity circuits, such as a DS1 and DS3 service, in its federal tariff. These services are functionally equivalent to unbundled network elements ("UNEs") and resold high capacity services that Qwest offers via its interconnection agreements or resale tariffs. Special access DS1 and DS3 services, UNE DS1 and DS3 loops, and/or resale DS1 and DS3 services offer a combination of functionally equivalent, dedicated transport and loop network elements used to deliver intrastate and interstate traffic to and from CLEC end user customers. In essence, like unbundled network elements, special access services have been provided by Qwest to CLECs and such services involve the use of Qwest's last mile loop and transport facilities to enable connections between CLEC's emerging networks and customer premises.

These services provide end users with high capacity bandwidth and are designed for, and utilized by, Qwest's competitors to serve large and medium size business customers. Since Qwest's competitors often lack the ubiquitous network reach of Qwest, they must utilize a combination of their own network assets augmented by a high capacity circuits from Qwest to complete network links to certain customers. TWTC and other carriers are highly reliant on Qwest's ability and performance in delivering special access facilities for connections to Arizona business customers. Therefore, the use of high capacity circuits directly supports intrastate service competition.

Qwest is the dominant provider of special access service in Arizona. In fact, no other Arizona carrier has facilities in place or the ability to replicate Qwest's statewide network. Qwest is the only economically viable option for providing last mile facility to many of a competitor's end user customers. Therefore, CLECs are just as dependent on

the timely and proper provisioning by Qwest of special access services as are CLECs that purchase equivalent high capacity services on an unbundled basis, to the extent they have been able to obtain unbundled elements on a combined basis.

Delays in provisioning special access services, like delays in provisioning unbundled network elements, are particularly harmful in the large business market segment. Large business customers are not tolerant of any unanticipated delays or problems in obtaining service. If a CLEC promises a customer service on a certain date and the date is not met because of Qwest's problems, the CLEC's reputation suffers irreparable harm. Receiving quality service from Qwest, whether the CLEC orders that service out of a tariff or an interconnection agreement, is essential to the development of robust competition.

TWTC and other CLECs rely to a great extent on Qwest's special access services to provide local service. The quality of those special access services directly affects these CLECs' abilities to offer competitive local exchange services in Arizona. Qwest, however, has offered to extend its proposed PAP only to unbundled network elements and resale services, effectively excluding any remedy for Qwest's failure to provision high capacity circuits used to provide local exchange service as special access services. As a result, Qwest has every incentive to provide inadequate special access services to CLECs to the ultimate detriment of local exchange consumers in Arizona. Therefore, TWTC believes the Commission should incorporate special access provisioning performance and penalty measures as part of Qwest's PAP.

TWTC has requested through Qwest's wholesale service account team, that special access performance reports be developed and shared monthly with TWTC. This request remains an open issue. Further, until Qwest makes special access performance information generally available, TWTC will not be able to evaluate whether Qwest's special access reports capture the critical operational aspects of their performance in this area. To date, Qwest has not supplied any reports pertaining to special access.

To illustrate TWTC's concern, the Qwest Performance Assurance Plan ("QPAP") for Arizona currently provides 53 Performance Indicator Definitions ("PIDs"), in 9 OSS reporting categories (electronic gateway availability, ordering & provisioning, maintenance & repair, billing, database updates, directory assistance, operator services, network performance, and collocation) that will measure services purchased under a CLEC's interconnection agreement with Qwest. Although the entire spectrum of metrics (PIDs) to be reported by Qwest are not applicable to special access services, there are many that do. For instance, metrics pertaining to timely delivery of firm order confirmations ("FOCs"), jeopardy notices, number of due date changes per order, installation commitments met, delay days, new service installation quality, out of service cleared within 24 hours, mean time to restore, repair repeat report rate, repair commitments met, trouble rate, telephone answer time, billing completeness, among others, could simply be expanded to include an additional product disaggregation within the existing QPAP to address TWTC's concerns about special access performance.

From a practical standpoint, expanding specific PIDs within the existing QPAP to include special access products would be the most expedient manner in which to address reporting Qwest's special access performance in Arizona and, hopefully, throughout its 14 state operating region. In addition, the current QPAP already contains a remedy plan to address poor performance by Qwest that could easily be incorporated to accommodate special access products. TWTC believes that uniform special access reporting metrics in Arizona and across the Qwest operating region is essential to support a "level" playing field, and to ensure robust local competition when CLECs choose this mode of market entry.

CLECs that use special access services are placed at a competitive disadvantage relative to CLECs that purchase equivalent high capacity services on a resold or unbundled basis. CLECs that purchase high capacity services on an unbundled basis will have more performance data, metrics and benchmarks to measure whether they are receiving quality service, and if Qwest's performance is below the standards, those CLECs will have remedies and penalties to compensate them for that poor service. Therefore, Qwest will have the incentive to ensure that it complies with the metrics for resold and unbundled high capacity services, but will not have that same incentive for the equivalent services purchased by CLECs utilizing Qwest's tariff-based special access services. CLECs should not be penalized based upon their mode of entry.

CLECs like TWTC have made substantial investment in plant and equipment to enable delivery of a high quality and reliable product to their end user customers. To exclude special access high capacity services from mandatory 271 performance reporting requirements and a Commission ordered remedy plan effectively penalizes CLECs because of their business decision to purchase high capacity services out of a tariff instead of purchasing UNEs. Not only are CLECs penalized in this manner, but Qwest is also allowed to wiggle out of any mandatory obligation to report special access performance or be subject to penalties to CLECs for poor performance.

The services offered are functionally equivalent, whether offered under a tariff or under an interconnection agreement. Any distinction between the special access services and UNEs is premised entirely on a regulatory distinction (i.e., offering a particular service through a state or federal tariff or pursuant to an interconnection agreement). Without imposing metrics on the equivalent special access services, Qwest escapes the need report metrics and be subject to financial penalties for a legitimate form entry to Arizona's local telecommunications markets.

Qwest has not identified any actual differences between equivalent high capacity special access facilities, unbundled facilities, and resold facilities that would justify different treatment. Exclusion of high capacity special access services that are used to deliver mixed traffic (intrastate and interstate) amounts to disparate treatment of CLECs choosing this mode of market entry where no apparent distinction is made for equivalent unbundled or resale services.

Moreover, inclusion of special access services ordered from tariffs as part of 271 appears to be an overlooked area of local market competition that requires immediate attention by the Commission to protect against post-271 backsliding by Qwest. Other state commissions, particularly Minnesota, New York, and most recently Texas, have taken steps to ensure that local competition develops by assessing and imposing specific service standards, reporting and penalties for ILEC provisioning of special access services.

Conclusion

On behalf of TWTC, I want to thank you for the opportunity to raise these issues during our meeting with the FCC officials and to supplement the record in this proceeding. As always, should you or other members of the staff have any comments or questions please feel free to contact me at (503) 416-1588.

Sincerely,



Brian D. Thomas
Vice President – Regulatory

cc: All parties of record

TIME WARNER  TELECOM

PO Box 8935
Vancouver, WA 98668
Tel: 360 356-4700

Sent via facsimile and US Mail

Pat White
Qwest Senior Project Analyst
Collocation Project Management Center

June 29, 2001

Dear Ms. White,

Time Warner Telecom of Arizona, LLC ("TWTC"), has received Qwest's quote relating to decommissioning TWTC's collocation site at Rincon, AZ. The quote indicates that the two fees (Decommission Assessment Fee and Network Systems Administrative Fee) are based on TELRIC costing principles although no supporting cost documentation has been provided. Moreover, it does not appear that the decommissioning fees are part of the Company's interconnection agreement with Qwest for the State of Arizona nor have they been approved in any regulatory proceeding by the Arizona Corporation Commission.

Your letter accompany the decommissioning quote states that the Company has 30 days from the date of the quote to accept responsibility for paying the decommissioning charges or Qwest will cancel the decommissioning order and recurring charges will continue to be assessed. The letter does not cite any authority, contractual condition, or mutually agreed to policy to support Qwest's position.

At this time, TWTC does not intend to remit payment for what it believes are unsubstantiated charges. Additionally, TWTC does not concur with Qwest's position on the timing of decommissioning and responsibility for recurring charges after notice was provided to Qwest.

I suggest that representatives from both companies discuss this matter in the near future. Please contact me to begin discussions.

Regards,



Ann Bryant
Carrier Relations Manager

cc: Libby Hale
Brian Thomas
Sandy Barto
John Moore

Attachment A



Qwest.
Wholesale Product Marketing

July 11, 2001

Ms. Ann Bryant
Carrier Relations Manager
Time Warner Telecom
P.O. Box 8935
Vancouver, WA 98668

Via E-Mail and U.S. Postal Service

Dear Ms. Bryant:

This letter is in response to your letter dated June 29, 2001 and subsequent to our verbal conversation regarding your letter on July 11, 2001.

During our discussion today, we committed to respond in writing to your concerns. We will cover several direct points in your letter as well as the future direction of the Decommission product offering.

It is correct that we have not currently filed Telric pricing for the Decommission product offering. We developed this product offering in response to industry need and issued the product offering March 9, 2001. It was communicated via industry notification and channel distribution. The product description has been forwarded to you and is currently in our Qwest Wholesale Product Catalog on the Qwest website.

It is correct that the Arizona Commission has not approved the pricing for this product, since Qwest has not filed this product offering with pricing to the Arizona Commission. The Time Warner Telecom interconnection agreement does not address this product nor pricing either. You do have the right to accept this product offering as it currently is, subject to subsequent filing and a pricing ruling by the Arizona Commission. You also have the right to negotiate an addendum to your interconnection agreement with Qwest.

The quote in question has been issued as of June 17, 2001 and will expire on July 18, 2001 if not accepted as defined by receipt of payment by Qwest via the invoicing process.

Our current pricing which was based on Telric pricing principles is as follows:

- Decommission Assessment Fee \$854.60
- Network System Administrative Fee \$2601.05
- Total Quote \$3,455.65
- Decommission Assessment Fee consists of the following:

Attachment B

- Job monitoring, order validation, and scheduling. We review the request, monitor the request, validate it, enter into our data base tracking system.
- Collocation Project Management Center Quote preparation.
- Common systems planning engineering center prepares the planning document for funding approval, reviews impacts on the space queue, obtains funding authorization, and prepares the engineering walk-thru package.
- We conduct the walk-thru engineering visit, fill out the documentation and inventory for future potential credit if an assuming CLEC is obtained.
- Network Systems Administrative Fee consists of the following:
 - Engineering design work package preparation and issuance.
 - Schedule the job, project manage the job, and prepare an MOP for the actual installation work.
 - On site inventory review, installation changes, tagging, and installation completion notification to engineering.
 - Engineering close out and data base changes.

Lastly, we hereby commit to participating in a joint effort to review this Decommission product offering along with the two related product offerings of Cancellation and Change of Responsibility. This CLEC industry effort will begin on July 18, 2001 and complete in approximately 90 days. During our call today, I shared some of the proposed product modifications. At the conclusion of this joint effort, Qwest will file this revised product offering and rates with the state commissions, including Arizona. We welcome Time Warner Telecom's input to this joint product development process.

Sincerely,

Stephen C. Nelson

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN

JIM IRVIN
COMMISSIONER

MARC SPITZER
COMMISSIONER

In the Matter of Investigation into)
US West Communications, Inc.'s) Docket #T-00000A-00-0194
Compliance with Certain Wholesale)
Pricing Requirements for Unbundled)
Network Elements and Resale)
Discounts)
_____)

**POST-HEARING BRIEF OF
TIME WARNER TELECOM OF ARIZONA, LLC**

Time Warner Telecom of Arizona, LLC ("TWTC") respectfully requests that the Arizona Corporation Commission ("Commission") prohibit Qwest from unilaterally imposing new contract terms on CLECs and, in particular, from implementing a new collocation decommissioning policy imposing collocation decommissioning fees. The Commission should order Qwest to negotiate, not dictate, new contract terms and should require that Qwest file and obtain approval of an appropriate TELRIC-based cost study to support any decommissioning charges.

TWTC is a CLEC with nationwide operations. Its customers, operations, and facilities in Arizona are largely the legacy facilities of GST Telecom acquired by TWTC

in January of this year. Nationally, TWTC delivers “last-mile” broadband data, dedicated Internet access and voice services in more than 42 metropolitan areas.

Qwest seeks to impose unilaterally a decommissioning policy that purportedly overrides existing interconnection agreements and to charge CLECs fees that have not been reviewed and approved by this Commission nor even included in cost studies in this proceeding. Specifically, Mr. Kennedy’s rebuttal testimony described three recent collocation policies including a collocation decommissioning policy. Kennedy Rebuttal Testimony, p. 17; and Exhibit RFK-1. Pursuant to this decommissioning policy, Qwest assessed certain payments on CLECs vacating collocation space, including a “Network System Administration Fee” and “Decommissioning Assessment Fee.”

Mr. Hubbard adopted the testimony of Mr. Kennedy during the hearing. Mr. Hubbard was uncertain how this policy was derived and what role the CLECs played in the development of this policy. Transcript, p. 318, l. 14 through p. 319, l. 18. Mr. Hubbard made it clear that this decommissioning policy supercedes existing interconnection agreements with CLECs. Transcript, p. 313, ll. 9-20.

Mr. Hubbard did not know how the prices were determined and whether there are cost studies in support of those prices filed in this proceeding. Transcript, p. 314, ll. 7-15. Questioning of subsequent witnesses confirmed that there are no cost studies supporting these decommissioning prices filed in this docket, nor is Qwest seeking approval of these prices in this proceeding. Transcript, pp. 738-739.

Apparently, Qwest believes it can impose these changes without Commission approval. In fact, Qwest, prior to Commission approval or even the initiation of the hearing in this proceeding, tried to impose these prices on TWTC in Arizona. Transcript,

p. 315, ll. 21-24; *see also* WorldCom Exhibit 3 – attached to this Post Hearing Brief at Tab A. Such behavior is anti-competitive and an example of why it is so difficult for local exchange competition to emerge and flourish in Arizona.

The Commission must stop Qwest from implementing new policies that effectively amend existing Commission approved interconnection agreements without CLEC approval or Commission approval. The Commission also must stop Qwest from assessing rates and charges on CLECs that have not been approved by the Commission. Qwest's new decommissioning policy is but one of many "policies" that have been imposed unilaterally and, according to Qwest, must be followed by a CLEC. In fact, Qwest's position on this and other policies is take it or leave it, and, if you don't like it, the CLEC bears the burden of seeking an amendment to its interconnection agreement. *See* July 11, 2001 letter attached at Tab B. Simply stated, Qwest's view of the world turns contractual law on its head. Moreover, Qwest's position is violative of Section 252 of the Act, which requires negotiation and, if necessary, arbitration before state commissions of disputed terms and conditions for interconnection, collocation, or other requirements set forth in Section 251.

TWTC respectfully requests that the Arbitrators include in their ruling in this proceeding a strong order prohibiting Qwest from implementing new policies such as decommissioning unless or until such policies are mutually negotiated or approved by the Commission in an appropriate proceeding. In addition, TWTC urges the Arbitrators to reject Qwest's proposed decommissioning policy including charging fees for decommissioning until:

1. Decommissioning provisions have been approved by this Commission through the approval of a negotiated or arbitrated amendment to interconnection agreements, and;

2. The prices charged for decommissioning have been reviewed and approved by the Commission during an appropriate hearing.

RESPECTFULLY SUBMITTED this 31st day of August, 2001.

LEWIS AND ROCA LLP

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